

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** April 2, 2003

**To:** The Commission  
(Meeting of April 3, 2003)

**From:** Alan LoFaso, Legislative Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 508 (McCarthy)** - Telecommunications: commercial  
mobile radio services.

As introduced February 18, 2003

**Legislative Subcommittee Recommendation:**

**Summary:** This bill would amend the definition of telephone line for the express purpose of removing CMRS (wireless phone service) from CPUC jurisdiction.

**Analysis:** This bill would prevent the CPUC from ensuring accuracy in billing, reasonable quality of service; notice of service coverage; reasonable service termination practices and other consumer protection that is currently permitted by the FCC, including requiring access to the California Relay Service for the deaf and disabled via 7-1-1, 9-1-1 and other toll free numbers.

Currently, the CPUC jurisdiction is limited to regulations over consumer complaints and terms and conditions of service. Wireless carriers are required to register with the CPUC to offer service in California. They are required to collect and pay universal service surcharges.

This registration requirement provides the CPUC with information about what consumers of wireless service are facing in the marketplace. It also provides the CPUC the authority to address egregious carrier misconduct.

Customer complaints relating to wireless service are a critical barometer of market efficiency. Wireless complaints have nearly tripled in their share of total complaints, indicating that customers are unhappy about cellular carriers' billing and other aspects of cellular service.

The types of complaints made about wireless service have remained consistent in the last five years. These are, in order of magnitude:

- Billing – 74%
- Service – 13%
- Non-Regulated Areas – 8%
- Rules/Rates – 2%
- Miscellaneous – 3%
- Installation - 0%

The CPUC is currently considering a proceeding—the Telecommunications Bill of Rights Draft (BOR), Rulemaking 00-02-004. A proposed draft, issued on June 6, 2002, would require that all rates, terms and conditions for services ordered are accurate and understandable for both wire line and wireless telephone service. This bill would eliminate CPUC jurisdiction over cellular service. Therefore, if adopted, the BOR would only cover wire line telecommunications services.

#### Funding of California Universal Service Programs

Wireless customers currently support California's Universal Service program by the payment of surcharges to the Universal Lifeline Telephone Service Fund (ULTS), the California High Cost Fund –A (CHCF-A), the California High Cost Fund – B (CHCF-B), the California Teleconnect Fund (CTF) and the California Relay Service Fund (CRS). These programs were initiated for the purpose of ensuring that all Californians are connected to telecommunications networks whether living in rural high cost areas, low income or dealing with disabilities which prevent standard voice communication.

This bill would have the effect of preventing the funding of public programs now financed by end user surcharges for in state phone calls. This jurisdictional shift would represent the annual loss of \$289 million (surcharge funds from wireless carriers from 2001, the last full year of data) in funding for the CPUC's public programs (High Cost Funds A and B, the Universal Lifeline Telephone Service, the California Teleconnect Fund). These funds help ensure universal telephone service in the state. This would require a surcharge increase of almost 100% for land based telephone lines.

The CPUC would be unable to ensure universal telephone service in rural areas or for low-income telephone users who qualify for Universal Lifeline Telephone Service, unless it increased the surcharge level on wireline customers to make up for the shortfall caused by the elimination of wireless surcharge payments. Additionally, the California Teleconnect Fund for Internet access to schools and libraries might be underfunded without additional surcharges.

Loss of surcharge revenue from wireless providers would place existing programs in jeopardy and shift universal service burdens onto a smaller and smaller pool of wire line customers.

### Uncertainty for the CPUC's number conservation program

Wireless carriers currently hold a substantial portion of available telephone numbers. demanding and using more telephone numbers than any other segment of the telecommunications industry.

In 1996, California had 13 area codes. Between 1996 and 1999, California added 12 new area codes, bringing the total number of area codes to 25. The Legislature enacted legislation in 1999, which required the CPUC, among other things, to conduct gather number utilization information from carriers and to conduct an audit in each area code before deciding whether it was necessary to create a new area code.

Pursuant to the FCC's grant of authority and the new statutory requirements, the CPUC enacted a program of strong number conservation measures. Notwithstanding this bill, the CPUC would retain authority over the number inventories wireless carriers hold, pursuant to this grant of FCC authority.

This bill would repeal the CPUC's general authority over wireless carriers. However, specific authority over wireless number inventories would remain in effect. This discrepancy would create uncertainty for the CPUC's number conservation program.

### **LEGISLATIVE HISTORY**

The Omnibus Budget Reconciliation Act (OBRA) of 1993 preempted state authority over the rates and entry of CMRS, but specifically preserved in Section 332(c)(3) of the Communications Act state authority over the terms and conditions of CMRS, and state authority to require CMRS providers to contribute to state universal service programs. The legislative history of section 332(c)(3) confirms this congressional intent, and cites service quality as an example of one of the terms and conditions of CMRS that remains subject to state authority. .

### **LEGISLATIVE STAFF CONTACT**

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**Date:** April 2, 2003

**BILL LANGUAGE**

BILL NUMBER: AB 508      INTRODUCED  
BILL TEXT

INTRODUCED BY    Assembly Member McCarthy

FEBRUARY 18, 2003

An act to amend Sections 233 and 234 of the Public Utilities Code, relating to telecommunications.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 508, as introduced, McCarthy. Telecommunications: commercial mobile radio services.

Under existing federal law, the Federal Communications Commission licenses and regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services. Under existing federal law, no state or local government may regulate the entry of or the rates charged by any commercial mobile service, but is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service. Where commercial mobile radio services are a substitute for landline telephone exchange service for a substantial portion of the telecommunications within a state, commercial mobile radio service providers are not exempted by federal law from requirements imposed by a state commission on all providers of telecommunications services that are necessary to ensure the universal availability of telecommunications services at affordable rates.

Existing law empowers the Public Utilities Commission to regulate public utilities including telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation. Existing law requires telephone corporations that are commercial mobile radio services providers to provide customer services. A telephone corporation includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within the state. A telephone line includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether the communication is had with or without the use of transmission wires.

This bill would provide that a telephone corporation does not include a person or corporation that provides commercial mobile radio services, unless expressly made applicable, by any statute, to commercial mobile radio service or a category of commercial mobile radio services. The bill would change the definition of a telephone line as including all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone using transmission wires.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 233 of the Public Utilities Code is amended to read:

233. "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone ~~—, whether such communication is had with or without the use of—~~ using transmission wires.

SEC. 2. Section 234 of the Public Utilities Code is amended to read:

234. (a) "Telephone corporation" includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.

(b) "Telephone corporation" does not include any of the following:

(1) Any hospital, hotel, motel, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling services provided by a telephone corporation to its patients or guests.

(2) Any one-way paging service utilizing facilities that are licensed by the Federal Communications Commission, including, but not limited to, narrowband personal communications services described in Subpart D (commencing with Section 24.100) of Part 24 of Title 47 of the Code of Federal Regulations, as in effect on June 13, 1995.

(3) *Any commercial mobile radio services, unless expressly made applicable, by any existing statute or any statute enacted on or after January 1, 2004, to commercial mobile radio services or a category of commercial mobile radio services. As used in this section, the term "commercial mobile radio service" has the same meaning as the term "commercial mobile service," as defined in subsection (d) of Section 332 of Title 47 of the United States Code and Section 20.3 of Title 47 of the Code of Federal Regulations.*